

REMARKS

Claims 1-12, 19-23, 25-28, 30, 36-48, 58-65 and 67-79 are pending. Claims 1-12, 30, 36-39, 67-72, 78 and 79 remain in the case. Of the pending claims, claims 19-23, 25-28, 40-48, 58-65 and 73-77 have been withdrawn.

Claims 13-16, 17, 18, 24, 19, 31-35, 49-57, 66 and 80 are cancelled.

Applicants are appreciative of the Examiner's finding that claims 1-12, 30, 36-39 and 67-72 are allowed.

Claims 78-80 stand rejected under 35 USC 102 as being anticipated by US Patent No. 6,585,769 ("Muhanna").

The Examiner takes the position that in the Muhana method, the first bone fastener is fully inserted into a first transition region of an upper vertebrae and the second bone fastener is fully inserted into the second transition region of a lower vertebrae, and has cited Figure 4 of Muhana in support thereof.

Applicants respectfully traverse the Examiner's position in respect of claims 78-79. Claim 78 requires "fully inserting the first bone fastener ... into the first vertebrae". The result of this step is shown clearly in FIGS. 7 and 16b of the as-filed application. The advantage of such "full insertion" is the production of a very low-profile system, a quality that is highly desirable in an anterior system.

In contrast, in the Muhana method, the heads of the bone fasteners remain above the surface of the vertebral bodies. See Figure 4 of Muhana. Therefore, the Muhana method does not teach or suggest "fully inserting the first bone fastener ... into the first vertebrae".


Moreover, Applicants note that Muhana recites that its device is “directed to a simple and flexible artificial ligament which easily conforms to a patient’s anatomy...” (see col. 1, lines 46-47 of Muhana), and that these ligaments’ “(a)ptures 108 are preferably countersunk defining a beveled or chamfered surface 112 adjacent the upper surface of the ligament body 102 for reception of the head 114 of the bone fasteners 110 in flush relation therewith.” Accordingly, Muhana positively teaches not only that the ligament should conform to the bone (i.e., not penetrate the bone), but also that the head of the bone fastener is preferably mounted flush against beveled surface 112 of the ligament (i.e., the fastener head stops there and does not go into the bone). Accordingly, Applicants respectfully submit that Muhana teaches away from “fully inserting the first bone fastener ... into the first vertebrae”. For these reasons, Applicants submit that the present rejection of claims 78-79 over Muhana be withdrawn.

Since Applicants have cancelled claim 80, Applicants submit that the present rejection of claim 80 over Muhana be withdrawn.

In addition, please provide any extensions of time which may be necessary and charge any fees which may be due to Deposit Account No. 10-0750, but do not include any payment of issue fees.

Should there be any remaining or further questions, the Examiner is requested to place contact the undersigned directly.

Respectfully submitted,

 1-13-07
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